

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

JAMES H. SIMRELL,

Plaintiff,

-against-

6:02-CV-0866  
(LEK/GHL)

JO ANNE B. BARNHART, as  
Commissioner of Social Security,

Defendant.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on May 8, 2006, by the Honorable George H. Lowe, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Report-Rec. (Dkt. No. 24).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," Fed. R. Civ. P. 72(b), in compliance with L.R. 72.1. In the interval of at least fifteen days since the Magistrate Judge filed the subject Report-Recommendation, no objections to it have been raised. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.<sup>1</sup>

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<sup>1</sup> The Court notes that Judge Lowe cites the case of Serrano v. Barnhart, Civ. No. 02-6372 LAP AJP, 2003 WL 22683342, at \*11 (S.D.N.Y. Nov. 14, 2003) (Report-Recommendation), rejected by No. 02 Civ. 6372(LAP), 2005 WL 3018256 (S.D.N.Y. Nov. 10, 2005), for, *inter alia*, the legal standard addressing the burdens of proof with regard to the "five-step sequential evaluation process to determine disability." See Report-Rec. (Dkt. No. 24) at 4-5. Although that Report-Recommendation was not adopted, the cited general standards of law were unaffected.

Accordingly, it is hereby

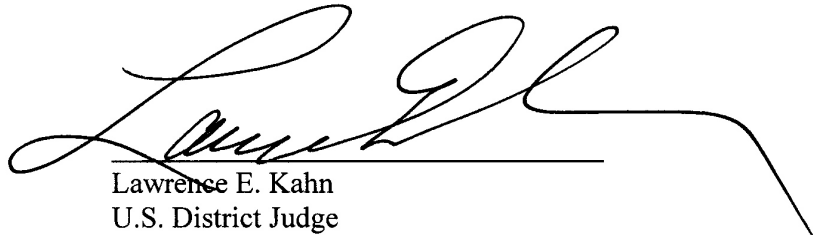
**ORDERED**, that the Report-Recommendation (Dkt. No. 24) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that this matter is **REMANDED** to the Commissioner, pursuant to the fourth sentence of 42 U.S.C. § 405(g), for further proceedings consistent with this Order and Judge Lowe's Report-Recommendation; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 26, 2006  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge